

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LORNA R. PEARCE,

Plaintiff,

v.

COULEE CITY, et al.,

Defendants.

NO: 11-CV-0030-TOR

ORDER GRANTING STIPULATED  
MOTION FOR PROTECTIVE ORDER

BEFORE THE COURT is the parties' Stipulated Motion for Protective

Order (ECF No. 102). Having reviewed the proposed protective order, the Court

will grant the motion.

**ACCORDINGLY, IT IS HEREBY ORDERED:**

The parties' Stipulated Motion for Protective Order (ECF No. 102) is

**GRANTED.** The parties shall comply with, and be governed by, the terms of the stipulation as set forth herein:

1       **Recitals.** In order to facilitate discovery, the parties enter into this  
2 stipulation. All documents or tangible things produced by the parties in response  
3 to any request for production shall be subject to the terms of this stipulation. The  
4 parties intend for the court to adopt this stipulation for protective order.

5       **Definitions.** “Confidential” means information designated as confidential as  
6 provided herein.

7       **Designation of confidentiality.** The parties in this case may designate  
8 documents and tangible things as “confidential” only after a good faith  
9 determination that disclosure should be limited based upon privacy interests or  
10 recognized privilege. The designation shall be accomplished by marking each  
11 such document or tangible thing with the word “confidential.” The designating  
12 party shall have seven (7) calendar days following receipt of documents produced  
13 in response to designate them as confidential. All parties shall treat the documents  
14 as confidential prior to expiration of the seven (7) day period. The parties  
15 understand and agree that the designation of any documents or tangible things as  
16 “confidential” does not create a legally protected privilege or  
17 confidentiality/privacy interest where none existed at law independent of this  
18 stipulation.

1           **Types of confidential information.** Plaintiff anticipates designating the  
2 following information as confidential: (a) personal financial information; and (b)  
3 confidential personal writings.

4           **Challenges.** The parties may challenge the designation of confidentiality at  
5 any time by written notice to counsel for the designating party. The designating  
6 party shall then move the court for a protective order within a reasonable time after  
7 receipt of such notice. This stipulation shall not alter the burden of proof in  
8 obtaining the protective order nor shall this stipulation alter the substantive law  
9 regarding the types of information that is protected by privileges and/or  
10 confidentiality/privacy interests. The parties shall continue to treat the designated  
11 documents as confidential until the court rules on the protective order.

12           **Parties bound.** The parties shall limit disclosure of confidential documents  
13 to: (a) the parties themselves; (b) their respective counsel and law firm staff; and  
14 (c) consulting or testifying expert witnesses. Confidential documents shall not be  
15 disclosed to third parties. All persons receiving disclosure of confidential  
16 documents shall be shown a copy of this protective order or shall be advised of the  
17 terms of this protective order.

18           **Use.** Use of confidential documents shall be limited to this lawsuit.

19           **Reservations.** The parties specifically reserve the following questions: (a)  
20 Plaintiff's implied waiver of privileges, if any, and the scope of such waiver; (b)

1 the authenticity or admissibility of any evidence; and (c) third-party privacy  
2 interests or privileges. The parties also reserve the right to seek further protective  
3 orders or modifications of this protective order, as appropriate.

4       **Clawback.** Accordingly, the parties, by and through their respective  
5 attorneys, stipulate and agree to a “Clawback” provision to expedite and facilitate  
6 the production of electronic and hard copy data, information and documents, and to  
7 protect against inadvertent disclosure of attorney-client privileged communications  
8 or work product materials.

9       The parties further stipulate that the inadvertent disclosure or production of  
10 any information or document that is subject to an objection on the basis of  
11 attorney-client privilege or work-product protection, including but not limited to  
12 information or documents that may be considered Confidential information, will  
13 not be deemed to waive Plaintiff’s claim to its privileged or protected nature or  
14 estop that party or the privilege holder from designating the information or  
15 document as attorney client privileged or subject to the work product doctrine at a  
16 later date.

17       Moreover, the parties agree that any party receiving such information or  
18 document shall return it upon request from the producing party. Upon receiving  
19 such a request as to specific information or documents, the receiving party shall  
20 return the information or documents to the producing party within five (5) business

1 days, regardless of whether the receiving party agrees with the claim or privilege  
2 and/or work-product protection. Disclosure of the information or document by the  
3 other party to such a later designation shall not be deemed a violation of the  
4 provisions of this Order. The parties agree that this Order and Clawback Provision  
5 shall be governed by the Federal Rule of Evidence 502(d) and is entered pursuant  
6 to Federal Rule of Civil Procedure 26(c)(1).

7 The District Court Executive is hereby directed to enter this Order and  
8 provide copies to counsel.

9 **DATED** this 4<sup>th</sup> day of October, 2012.

10 *s/ Thomas O. Rice*

11 THOMAS O. RICE  
12 United States District Judge